

the question of effectiveness has not transcended the realm of opinion into the realm of demonstrable fact.

"It is true, as said by appellant in its brief, that 'The facts as to the history and development of the Food and Drug legislation, and the restrictions and limitations which Congress intended in connection therewith, are clearly reviewed in *U. S. v. 7 Jugs, Etc.*' by Judge Joyce, but that review does not aid appellant on the point urged here. There is not presented here a mere difference of opinion between two schools of doctors. The question of whether the labeling on a drug 'is false and misleading in any particular' is a question of fact, and the test to be applied is whether the drug is effective in curing, or in giving relief from, the disease for which it is recommended. Upon this question the witnesses for the government made tests of the remedies, analyzed the product, and in some cases administered it to their patients. Their testimony was based upon such scientific knowledge so acquired. The question was, therefore, one of fact for the trial court to decide in the first instance.

"We have considered every contention presented by appellant in its brief. Minor contentions not discussed above are without merit and do not warrant any additions to the foregoing opinion."

A petition for a writ of certiorari was subsequently filed on behalf of the claimant, with the U. S. Supreme Court, and on January 9, 1950, the petition was denied.

2923. Misbranding of Nature's Minerals. U. S. v. Nature's Mineral Food Co., Perry B. Smith, and Thornton B. Smith. Pleas of not guilty. Tried to the court and jury. Verdict of guilty against company; verdicts of not guilty against individuals. Fine of \$500 against company. (F. D. C. No. 24263. Sample No. 73532-H.)

INDICTMENT RETURNED: On or about September 23, 1948, Southern District of Indiana, against the Nature's Mineral Food Co., a partnership, Indianapolis, Ind., and against Perry B. Smith and Thornton B. Smith, members of the partnership.

ALLEGED SHIPMENT: On or about June 6, 1947, from the State of Indiana into the State of Ohio.

LABEL, IN PART: (Bottle) "Nature's M. F. Co.'s Minerals 270 Tablets A Composition of Minerals Comprising Calcium Phosphate, Iodized Salt, Calcium Carbonate, Magnesium Sulphate (Epsom Salts), Sodium Phosphate, Sulphur Sublimed, Iron Sulphate and Potassium Iodide."

NATURE OF CHARGE: Misbranding, Section 502 (a), certain statements in accompanying printed cards entitled "Now a Mineral Health Resort in Your Home" were false and misleading since the article would not be efficacious in the treatment of the diseases, symptoms, and conditions represented, and the use of the article would not be effective to fulfill the promises of benefit stated and implied. The statements represented and suggested that the article would be efficacious in the treatment of acidosis, anemia, constipation, headache, lumbago, neuritis, rheumatism, sciatica, kidney and bladder disorders, nervousness, gastric ulcers, digestive troubles, sore muscles, impaired joint function, choking goiter, backache, gout, and skin eruptions; that use of the article would promote the flow of gastric juice, facilitate the digestion of food, restore health, build up atrophied tissues, give the user new ambition, prevent premature aging, and relieve pain; that use of the article would be equivalent to a sojourn at a resort in its effect on one's health; and that its use would result in vigorous health of the user.

DISPOSITION: Pleas of not guilty were filed on behalf of the individual defendants on October 1, 1948, and shortly thereafter a motion was filed to strike the alleged defendant, the Nature's Mineral Food Co., from the indictment since

the company as a partnership was not a legal entity. The court denied such motion, and on April 8, 1949, a plea of not guilty was entered for the company.

On May 6, 1949, the case came on for trial before a jury and lasted until May 7, 1949. The jury returned a verdict of guilty as to the company and a verdict of not guilty as to the individual defendants.

On May 11, 1949, defense counsel filed a motion in arrest of judgment on the basis (1) that a partnership in Indiana is not a legal entity and can not be guilty of a criminal offense; (2) that the punishment of the partnership after each partner had been acquitted would constitute double jeopardy; and (3) that the punishment of the partnership after each partner had been acquitted would deprive the partners of liberty or property without due process of law.

On July 5, 1949, the court overruled the motion in arrest of judgment, and on July 14, 1949, it assessed a fine of \$500 against the partnership.

2924. Misbranding of Gramer's Sulgly-Minol. U. S. v. 105 Bottles, etc. (F. D. C. No. 27234. Sample Nos. 41224-K, 41239-K.)

LABEL FILED: June 7, 1949, Western District of Washington.

ALLEGED SHIPMENT: On or about May 16, 1949, by Walter W. Gramer, from Minneapolis, Minn. The circulars were shipped during the month of November 1948, and on or about March 31, 1949, and bore the titles "Arthritis It's Grip Broken," "A Light Should Not Be Hidden," and "An Additional Discovery."

PRODUCT: 105 4-ounce bottles of *Gramer's Sulgly-Minol* and 200 circulars at Seattle, Wash. Analysis showed that the product consisted essentially of a lime and sulfur solution with a small amount of glycerin.

LABEL, IN PART: "Gramer's Sulgly-Minol."

NATURE OF CHARGE: Misbranding, Section 502 (a), the statement "For treatment of muscular pains, apply to soles of feet before retiring," which appeared on the bottle label, was false and misleading since the product when used as directed would not be effective in the treatment of muscular pains.

DISPOSITION: July 29, 1949. Default decree of condemnation and destruction.

2925. Misbranding of viscysate tablets and viscysate liquid. U. S. v. 36 Bottles, etc. (F. D. C. No. 27776. Sample Nos. 13157-K, 13158-K.)

LABEL FILED: August 16, 1949, Eastern District of Pennsylvania.

ALLEGED SHIPMENT: On or about January 10, February 21, March 29, May 16, and July 11, 1949, by Ernst Bischoff Co., Inc., from Ivoryton, Conn.

PRODUCT: 36 bottles of *viscysate tablets* and 30 bottles of *viscysate liquid* at Philadelphia, Pa.

LABEL, IN PART: "50 Tablets Viscysate * * * Each Tablet Contains: Viscum Album (Solid Extract) 0.30 Gm. (4¾ grs.)" and "30 cc. Viscysate * * * Contents: Viscum Album extract . . . 86% Ethyl Alcohol . . . 14%."

NATURE OF CHARGE: Misbranding, Section 502 (a), certain statements on the label of the articles and in an accompanying leaflet entitled "Viscysate" were false and misleading. The statements represented and suggested that the articles were effective in the treatment of high blood pressure, vasomotor disturbances caused by excitement, overexertion, climacteric manifestations,